IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RSA No. 98 of 1997

Date of Decision : 22.11.2007

Om Parkash & another …Appellants

Versus:

State of H. P.& another …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *Yes*

For the appellants: Mr. G. D. Verma, Sr. Advocate with Mr. Romesh Verma, Advocate.

For the respondents. Mr. Ashok Chaudhary, Addl. A.G.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment and decree dated 28.2.1997 passed by the Addl. District Judge, Shimla in Civil Appeal No. 67-S/13 of 1995/88 titled as State of H.P. & another v. Om Parkash & another, reversing the judgment and decree dated 11.3.1987 passed by the Senior Sub Judge, Shimla in Civil Suit No. 310/1 of 84/83, partly decreeing the plaintiffs' suit for recovery of money.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

For the purpose of convenience, the appellants hereinafter are referred to as 'the plaintiffs' and the respondents herein are referred to as 'the defendants'.

The appeal was admitted on the following substantial questions of law:-

"1. Whether findings of the Learned Addl. District Judge, Shimla dated 28.2.1997 are vitiated and those are without jurisdiction for want of proper appreciation of the point of controversy as involved in this case?

2. Whether there has been mis-reading and mis-appreciation of the pleadings of the parties as well as the oral and documentary evidence as produced by the parties on record?

3. Whether the assessment of rent as made by the Deputy Commissioner, being Collector of the District is binding upon respondents and they are estopped to find fault wit them?

4. Whether by ignoring application under Order 41 Rule 27 CPC injustice has been caused and this application should have been allowed?

Learned counsel for the appellants fairly stated that he did not press substantial question No.4.

Plaintiffs filed a suit for recovery of a sum of Rs.1,47,600/- along with interest @ 12% per annum as rent/user charges for its building (hereinafter referred to as ' the building') occupied by the defendants and also adjoining vacant land comprising Khasra Nos. 5623/2, 5379 and 5363/1 measuring 7 bighas 6 biswas situated in Chak Nainar, Tehsil Jubbal, Distt. Shimla, H.P.

As per the case of the plaintiffs, the building comprising of approximately 22 rooms was agreed to be let out

to the defendants in the year 1980. Rs.1,401/- per month as rent was assessed by the Public Works Department which was not acceptable to the plaintiffs. The rent of the building was again got re-assessed by the Deputy Commissioner, Shimla, who assessed the same to be Rs.3,000/- per month. The claim of the plaintiffs with regard to the use of the land adjoining to the building was however negatived by the Deputy Commissioner. This was not acceptable both to the plaintiffs and the defendants. Consequently plaintiffs claimed user charges for the building at Rs.5,000/- per month. Notice u/s 80 CPC was served and the defendants were called upon to pay the same. The defendants admitted the rent to be Rs.1,401/- per month and paid a sum of Rs.41,668.75 paise to the plaintiffs as rent for the period in issue. In the interregnum, the building in question was acquired by the State under the provisions of the Land Acquisition Act and compensation was duly paid in accordance with law. The plaintiffs consequently filed the suit for recovery of the rent of the building @ Rs.5,000/- per month and for further sum of Rs.30,000/- for the use of the vacant land adjoining to the building for the period 9.10.1980 to 8.4.1983 immediately prior to the date of acquisition.

The suit of the plaintiffs was opposed on the ground that in terms of letters dated 2.7.1980 and 9.10.1980 (Exts.D-1 & D-2), the plaintiffs had agreed to let out the premises on the rent to be assessed by the Public Works Department of the State. The said assessment was carried out and the plaintiffs

having bound themselves to accept the same, no cause of action arose in favour of the plaintiffs to institute the present suit. In the written statement, however, it is categorically admitted as under:-

> "admitted to the extent that the aforesaid building comprising in Khasra No. 5363/2 was taken over on 9.10.1980 for running the R.I.T.I. at Jubbal. As is evident from the handing over report of Shri Jai Lal Dilta and Shri Om Parkash Dilta the plaintiff (copy enclosed at Annexure D-3) and B.D.O. Jubbal. Shr Jai Lal Dilta and Shri Om Parksh Dilta further agreed vide this report that rent as assessed by the PWD certificate (copy enclosed at Annexure D-4). It is admitted that the plaintiffs represented to the Secretary (Industries) for the enhancement of rent and matter was referred to the D.C. Shimla for his report. The D. C. Shimla had assessed the rent @Rs.3000.00 per month for the building only. The recommendation of the Deputy Commissioner has not been approved by the Govt. so far as the assessment was not based on technical/relevant data as per existing rules of the Government for assessment of the building. The land in Khasra No. 5379 was never handed over to the Department, so, the question of assessment of rent for the land does not arise. The plaintiffs were in possession of the land comprising in Khasra No. 5379 and were deriving benefit by sale of fruits of the orchard.".

Based on the pleadings of the parties, the trial Court framed the following issues:-

> "1) Whether the rent of the building was not correctly assessed, as alleged? OPP

2) In case Issue No.1 is proved what is the correct rate of rent which the defendants were liable to pay to the plaintiff, as alleged? OPP

3) To what amount the plaintiff is entitled to recover from the defendants? OPP

4) Reflief."

The plaintiffs examined four witnesses including an Expert and the defendants examined three witnesses.

Based on the evidence led by the parties as also the material on record, the trial Court held the letters dated 2.7.1980 (Ext.D-1) and 9.10.1980 (Ext.D-2) not binding on the parties as the defendants themselves had referred the matter to the Deputy Commissioner for re-assessment of the rent after the rent was fixed by the Public Works Department. The Court found that the claim of the plaintiffs with regard to the use of the adjoining land was not tenable in law and consequently based on the admissions made by the defendants accepted the rent of the building to be Rs.3,000/- as assessed by the Deputy Commissioner on the asking of the defendants. The claim of the plaintiffs qua rent was decreed and it was held that the plaintiffs were entitled to a sum of Rs.90,000/- for the period 9.10.1980 to 8.4.1983 and after making adjustment of a sum of Rs.41,668.65 paise already paid by the defendants to plaintiffs, finally vide judgment and decree dated 11.3.1987 the suit was decreed for a sum of Rs.48,311.35 paise along with interest @ 12% per annum. Proportionate costs were also awarded in favour of the plaintiffs.

Aggrieved by the same defendants filed a Civil Appeal and plaintiffs filed Cross Objections, which were registered as 67-S/13 of 1995/88 and 2-S/13 of 97/89, respectively. The first Appellate Court held the letters written by the plaintiffs being Exts.D-1 & D-2 to be binding upon the plaintiffs and consequently reversed the judgment and decree passed by the trial Court and dismissed the plaintiffs suit.

I have perused the record and the statements of the parties.

As the controversy in issue is with regard to the interpretation of the two documents Exts. D-1 & D-2, they are reproduced in its entirety:-

"To
The Director Industry, H.P.

Sub: Regarding giving house on rent to R.I.T.I.

Sir,

It is requested that today on dated 2.7.80, General Manager Industry came to take over my building on rent for opening R.I.T.I. I am ready to give my full building on rent to Industry Department and on the rent being assessed now-a-days. Till Industry Department do not make its own arrangement, I am ready to give this building for two to three years to Industry Department.

Sd/-

(Perkash Dilta and Bros.)
Village Labrote, Teh. Jubbal.
District Shimla
s/o Shri Jai Lal Dilta.
2-7-1980"

"To

The Director Industry, H.P.
Shimla-2.

Sir,

I have the honour to say that I have handed over the entire accommodation which is proposed to be taken for housing of RITI at Jubbal. The possession of the building has been given on 9.10.80 to the E.O. (Inds), Jubbal according to your orders shown by him. Further it is stated that rent as will be assessed by the PWD is acceptable to me.

Yours faithfully,

Sd/-
(Jai Lal Dilta)
Village Sundli, PO &
Teh. Jubbal
owner of the building.

Dated: 9.10.80"

Perusal of both the letters would therefore indicate that the rent of the building was to be assessed by the Department at the prevailing rates. Such assessment however has to be fair, just and reasonable. The building in question comprises of 22 rooms and was occupied from October 1980 to April, 1983. Ultimately in the year 1983 the building was acquired by the department which is indicative of the fact that the building was not only in good condition but also was suitable to house the Educational Training Institute run by the Department.

In the written statement it is clearly admitted that the reference was made by the Department (defendants) to the

Deputy Commissioner-cum-Collector to get the rent of the building re-assessed. It is also the admitted case of the defendants that the re-assessment was carried out by the Deputy Commissioner-cum-Collector in the presence of the parties, after affording due opportunity to all and the rent was assessed at Rs.3000/- per month.

Shri R.L. Khanna (DW-3) Principal of the Institute of the Department has also categorically admitted in his deposition that the building was got re-assessed through the Deputy Commissioner-cum-Collector who assessed the rent to be Rs.3000/- per month.

From the conduct of the parties, it is evident that the assessment carried out by the Public Works Department was also not found to be fair, just and reasonable, it was certainly not the prevailing market rent. Therefore, in these circumstances, the rent for the building was re-assessed through the office of the Deputy Commissioner-cum-Collector.

The trial Court held the assessment carried out by the Deputy Commissioner to be binding upon the parties and partly decreed the suit filed by the plaintiffs to that extent.

In my view, the judgment rendered by the first Appellate Court needs to be reversed and it cannot be held that in terms of letters Exts.D-1 & D-2 , the rental fixed by the Public Works Department alone would be binding upon the parties. In terms of Ext.D-1 the plaintiffs had agreed to accept the prevailing market rent. Ext.D-2 is a letter issued after the

possession was handed over. The plaintiffs and the defendants were thus bound to the assessment of rent on the prevailing rates. It is pertinent to point out that the building along with the land was acquired by the Department in the year 1983 itself and the compensation of Rs.2,27,991.30 paise was paid to the plaintiffs. This is also indicative of the high value of the property including the building.

In my view, the amount of Rs.3000/- assessed by the Deputy Commissioner-cum-Collector would be fair, just and reasonable. The State is enjoined with a duty to act fairly and pay reasonable compensation for the use of the private property. The conclusive evidence with regard to the accommodation and condition of the premises is not disputed. The assessment was got carried out through the Deputy Commissioner, a neutral yet an authoritative agency by the parties. They are to be bound by the same. It is not the case of the defendants that the said assessment was not carried out in accordance with the settled procedure of assessment or that they were not associated in the assessment of the rent. The judgment and decree passed by the first Appellate Court is set aside and that of the trial Court is restored.

The first Appellate Court has not appreciated the material on record in its correct perspective while arriving at its conclusion that Exts.D-1 & D-2 were binding on the parties and more particularly upon the plaintiffs. There has been mis-

appreciation of the material on record by the first Appellate Court. The questions are answered accordingly.

The appeal is accordingly accepted and the findings recorded by the first Appellate Court are set aside and that of the trial Court are restored.

(Sanjay Karol),
Judge.

November 22, 2007.
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